

Application No.: 09/848,255

Docket No.: 21919-00013-US

REMARKS/ARGUMENTS

Bearing in mind the comments in the final Official Action and the arguments presented in this Response, the application is believed to be in condition for allowance. An early indication of the same would be appreciated.

Withdrawal of the rejection of claim 1 under 35 U.S.C. §103(a) as being unpatentable over Razeto et al. (US 4,748,904) in view of Clemes (US 5,106,596) is requested.

At the outset, Applicant notes that, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, *the prior art reference must teach or suggest all the claim limitations*.¹ Further, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure.²

It is respectfully submitted that the unpatentability rejection over Razeto et al. in view of Clemes is unsustainable, as it is based on a misreading of the disclosure of Razeto et al.

The Examiner states that the outside sheets 18 and 16 comprise the layered structure of Figure 4. This is not correct. Figure 4 shows the outside sheet 16 as comprising paper 28 coated with plastic film 30. Figure 5 does not show the other outer layer 18. Figure 5 discloses the structure of the intermediate layer 20 – see column 2 line 68 to column 3 line 3. The other outside layer is designated 18 and is a single sheet of Kraft paper (see column 3 line 9).

Hence the entire rejection is based on a misunderstanding as to the construction of the layers 16, 18 and 20 as disclosed by Razeto et al.

¹ See MPEP §2143.

² *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) and See MPEP §2143.

Application No.: 09/848,255

Docket No.: 21919-00013-US

The Examiner then states that, in one embodiment, Razeto et al. discloses impregnating the layer 18 with reagent mixture and points to column 3 lines 55 to 65. Applicant agrees that this is a correct analysis of this portion of the disclosure of Razeto et al.

However, the remainder of the Examiner's objection is based on the mistaken conception that 18 is described by Razeto et al. as being a multi-layered construction including paper and plastic. This is not correct as explained above. Layer 18 is constituted by a single piece of Kraft paper. It is not described as a multi-layered product and there is certainly no disclosure of layer 18 being of a combination of paper and plastic.

It follows from this that the remainder of the argument on page 3 of the final Official Action has to be incorrect. The Examiner refers specifically to the fact that some material impregnated into the paper layer 18 of Razeto et al. would remain on the surface. This may be true. However, as Razeto et al. does not disclose coating Kraft paper 18 with plastic, the applied art does not disclose the equivalent of a coating of a gas releasing mixture between the paper layer and a coating of polyethylene. Only layers 16 and 20 disclosed in Figures 4 and 5 include plastic and paper, and there is no disclosure in Razeto et al. of impregnating these papers.

In summary, Razeto et al. does not teach or suggest that for which it is offered by the the Examiner, thus rendering the unpatentability rejection unsustainable. Therefore, the Examiner's assertion and conclusion as to what a person of ordinary skill in the art would find obvious is submitted as also being unsustainable, as such an assertion is based upon an improper interpretation of the teachings of Razeto et al.

Razeto et al. does teach impregnating paper 18, but the applied art does not disclose that the paper 18 has a plastic coating as well as being impregnated. Layers 16 and 20 are plastic coated papers, but there is no disclosure of impregnating the papers of these layers.

It is respectfully submitted that as the Examiner has, for the reasons set out above, set out an unpatentability rejection based on a misinterpretation of the applied art. Therefore, reconsideration and allowance of claim 1 is submitted as being in order.

Application No.: 09/848,255

Docket N .: 21919-00013-US

In view of the above, pending claim 1 is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claim : and to pass this application to issue.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 22-0185, under Order No. 21919-00013-US from which the undersigned is authorized to draw.

The Examiner is respectfully requested to enter this Amendment After Final, in that it raises no new issues, but merely establishes that the claim is clearly patentable over the references of record. In the alternative, the Examiner is respectfully requested to enter this Amendment After Final in that it reduces the issues for appeal.

The Director is hereby authorized to charge any fees, or credit any overpayment, associated with this communication, including any extension fees, to CBLH Deposit Account No. 22-0185.

Respectfully submitted,

By Larry J. Hume
Larry J. Hume

Registration No.: 44,163

CONNOLLY BOVE LODGE & HUTZ LLP

1990 M Street, N.W., Suite 800

Washington, DC 20036-3425

(202) 331-7111

(202) 293-6229 (Fax)

Attorney for Applicant

FAX RECEIVED

JUL 08 2003

TC 1700